

The Second Division consisted of the regular members and in addition Referee T. Page Sharp when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States  
( and Canada  
(  
(Baltimore and Ohio Railway Company

Dispute: Claim of Employees:

1. That the Baltimore and Ohio Railroad Company violated the controlling agreement, specifically, Rule 144 1/2, when on the date of December 21, 1983, they allowed train crews to perform air brake tests while Carmen were employed and were on duty at Benwood, WV.

2. That accordingly, Carrier be ordered to compensate Claimant for all monetary losses suffered as a result of such violation, such losses to the extent of two (2) hours and forty (40) minutes pay, at the time and one-half rate, equivalent to call time as per Rule 4 of the controlling agreement.

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

As third party in interest, the United Transportation Union was advised of the pendency of this case, but chose not to file a Submission with the Division.

The testing of air brakes by the train crew is said to be a violation of Rule 144 1/2(a) which reads:

"In yards or terminals where carmen in the service of the Carrier operating or servicing the train are employed and are on duty in the departure yard, coach yard or passenger terminal from which trains depart, such inspecting and testing of air brakes and appurtenances on trains as is required by the Carrier in

the departure yard, coach yard or passenger terminal, and the related coupling of air, signal and steam hose incidental to such inspection, shall be performed by the carmen."

When the Claim was submitted the Manager Mechanical stated the first Carrier response in a February 24, 1984 letter which stated:

"As you are aware, the type of air brake test made when the direction of the Mine Run is changed is a road test and requires a brake application, a check of the rear car and a release. It is my understanding that normally the Car Inspectors are notified that this test is to be made, but in most instances do not respond immediately and the crew assumes that since the inspectors are located only twenty-five feet from the movement and do not respond, that they are not in a position to make the road test, and they proceed to make their own. Apparently, according to information from Trainmaster Douglas, this happens frequently.

The above, notwithstanding, there were carmen on duty to perform this work and under no circumstances would we have called additional personnel to perform a task that would only consume approximately ten minutes. . . ."

This defense to the Claim was changed as the claim progressed. The primary reason for denial is that the duties are incidental to the duties of the train crew, therefore, are not exclusive to the Carmen.

We have examined precedent from this property between the Carrier and this Organization. Award No. 10021 denied the Claim because the move was within the yard, hence the three elements of Rule 144 1/2 were not met. Awards Nos. 10515 and 10518 held that no Carmen were assigned to the yard, hence the three elements of Rule 144 1/2 were not met. Award No. 10884 likewise found that a Carman was not on duty. Award No. 10886 found that the Organization had not met its burden of proof. Award No. 10085 concerned the coupling of air hoses before the Carman performed the air test. The Award held that the coupling of the air hose was not incidental to the testing of air brakes.

Award No. 10085 correctly applied Rule 144 1/2 (a) which requires exclusivity of work by the Carmen when "the related coupling of air, signal and steam hose [is] incidental to such inspection." Unlike this qualification, if:

- 1) Carmen in the employment of the Carrier are on duty, and
- 2) the train tested, inspected or coupled is in a departure yard or terminal, and
- 3) the train involved departs the departure yard or terminal,

the work "shall be performed by the carmen." We find the rule to be free from ambiguity if the requisite elements are met.

As the Carrier states in its Submission, "the train upon entering the yard had thirty nine (39) hoppers and two cabs." The statement of the Carrier establishes that Carmen were on duty and it was necessary for the test to be made. Therefore the necessary elements were established and Rule 144 1/2 was violated.

Scores of Awards have held that when an employee is runaround because the Carrier chose not to use a member of his craft, he is entitled to the call in rate. In this case the call in rate is two hours and forty minutes at the time and one-half rate.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 1st day of July 1987.



CARRIER MEMBERS' DISSENT  
TO  
AWARD 11287, DOCKET 10985-T

(REFEREE T. PAGE SHARP)

The air brake "test" made by the train crew on December 21, 1983 was merely a "set and release" of the brakes to assure the crew that the train was safe for movement. That type of "test" has never accrued exclusively to Carmen under any rule. Rule 144½ is only applicable when brake tests are performed in connection with mechanical inspection and repair -- not in connection with train handling.

Although this point was argued in the Carrier's June 8, 1984 declination, it apparently was ignored by the Majority. Further, it appears that the Majority did not fully comprehend the precedential value of Second Division Awards 10885 and 10886 which denied similar disputes between these parties.

In Award 10885 the Board held:

"It is well established that three criteria must be met to sustain the kind of claim made by the Organization, namely 1) the Carman in the employ of the Carrier is on duty; 2) the train was tested, inspected, and/or coupled in a train yard or terminal; and 3) the train involved departs a yard or terminal. Second Division Award Nos. 10680, 10107, 6827, 5368. Along with the provisions of this Rule, is the doctrine that coupling of air hoses as performed here is not exclusive to the Carmen Craft but can be performed by Trainmen if such work is "incidental to the handling or movement of cars in their own train and was not incidental to the mechanical inspection and testing of air brakes and appurtenances on that train by carmen". Second Division Award No. 5462. See also Second Division Award No. 5485:

'From the evidence in the record it is seen that the trainmen did not make an air brake test incidental to mechanical inspection and repairs, which is exclusively reserved to carmen. The automatic brake application and brake release test made by the trainman in this instance was incidental to the handling of cars in his train.'

\* \* \* \*

We therefore find that the record in this case does not demonstrate that the work performed by the train crew on the disputed date was incidental to the mechanical inspection and testing of air brakes and appurtenances on that train that is contemplated by Rule 144½. In light of this holding, it is unnecessary to address the other arguments advanced by the parties."

In Award 10886 the Board held:

"This is the same dispute addressed in our two previous Awards Nos. 10884 and 10885 concerning the Claim to the work by the Organization made under Rule 144½. As those Awards and the Awards cited therein hold, the question is whether the work was incidental to the handling or movement of cars in their own train so as to permit the yard crew to perform the work, or whether the work was incidental to the mechanical inspection and testing of air brakes and appurtenances on the train by Carmen thereby entitling the Carmen to the claimed work.

\* \* \* \*

If the Organization had proved its Claim that "the required air brake test on these cars was performed by the train crew" and that the cars were "inspected and tested by the yard/train crew" to the degree of making the work incidental to the Carman's mechanical inspection and testing function, then we would sustain the Claim under the rationale found in Second Division Award Nos. 8448 and 8602."

The fact that the set and release was incidental to train handling (as opposed to a mechanical inspection and testing of air brakes and appurtenances) was never refuted by the Organization and the claim should not have been sustained.

For the above reasons we dissent.

*Michael C. Lesnik*

M. C. Lesnik

*M. W. Fingerhut*

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*Robert L. Hicks*

R. L. Hicks

*P. V. Varga*

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*James E. Yost*

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